

§ 2.1-12

shall promptly advise the Administration of any time deposit arrangements made with the depository. The Administration reserves the right at any time to require the termination or modification of any such arrangements. With prior approval of the Administration a time deposit may be made in a depository other than the one with which the construction reserve fund is established.

§ 2.1-12 Election as to nonrecognition of gain.

(a) *Election requirements.* As a prerequisite to the nonrecognition of gain on the sale or loss of a vessel (or of a part interest therein) for Federal income tax purposes, the taxpayer, after establishing a construction reserve fund, must make an election with respect to such vessel or interest in the manner set forth in this paragraph.

(1) *In general.* Except as provided in subparagraph (2) of this paragraph, the election must be made in the taxpayer's Federal income tax return (or, in the case of a partnership, in the partnership return of income) for the taxable year in which the gain with respect to the sale or loss of the vessel is realized. The election as to the nonrecognition of gain shall be shown by a statement to that effect, submitted as a part of, and attached to, the return. The statement, which need not be on any prescribed form, shall set forth a computation of the amount of the realized gain, the identity of the vessel, the nature and extent of the taxpayer's interest therein, whether such vessel was sold or lost and the date of sale or loss, the full sale price or full amount of indemnity, and the amount and date of each payment thereof, the basis for tax purposes and any other data affecting the determination of the realized gain.

(2) *Certain Government payments.* In case a vessel is purchased or requisitioned by the United States, or is lost, in any taxable year and the taxpayer receives payment for the vessel so purchased or requisitioned, or receives from the United States indemnity on account of such loss, subsequent to the end of such taxable year, the taxpayer shall make his election by filing notice thereof with the Commissioner of Internal Revenue, Wash-

26 CFR Ch. I (4-1-02 Edition)

ington, DC, 20224, prior to the expiration of 60 days after receipt of the payment or indemnity. The taxpayer shall file a copy of the notice with the Secretary, Federal Maritime Board, Washington, DC, 20573. The form of the notice of election shall be prepared by the taxpayer and shall be substantially as follows:

ELECTION RELATIVE TO NONRECOGNITION OF GAIN UNDER SECTION 511(C)(2), MERCHANT MARINE ACT, 1936

Pursuant to the provisions of section 511(c)(2) of the Merchant Marine Act, 1936, as amended, notice is hereby given that the undersigned taxpayer elects that gain in respect of the sale to the United States, or indemnification received from the United States on account of the loss, of the vessel named below or share therein shall not be recognized. The circumstances involved in the computation of such gain are as follows:

Name and other identification of vessel _____
 Nature and extent of the taxpayer's interest in the vessel _____
 Nature of disposition, i.e., sale or loss _____
 Date of disposition _____
 Full sale price or full amount of indemnity received by taxpayer _____
 Amount and date of each payment of sale price or indemnity received by taxpayer _____
 Amount and date of each previous deposit of such payments in construction reserve fund _____
 Identification of each check or other instrument by which payment made to taxpayer _____

Tax basis of taxpayer's interest in vessel _____
 Any other data affecting the determination of the realized gain _____
 Amount of gain (submit computation) _____

(Name of taxpayer)

By _____

(Date of execution)

(b) [Reserved]

§ 2.1-13 Deposit of proceeds of sales or indemnities.

(a) *Manner of deposit.* The deposit required by section 511 of the Act must be made in a construction reserve fund established with a depository or depositories approved by the Administration and subject to the joint control of the Administration and the taxpayer. It is not necessary to establish a separate fund with respect to each vessel or share in a vessel sold or lost.

(b) *Amount of deposit.* With respect to any vessel sold or lost, or a share therein, the deposit must be in an amount equal to the “net proceeds” of the sale, or the “net indemnity” for the loss. By “net proceeds” and “net indemnity” is meant (1) the depositor’s interest in the adjusted basis of the vessel plus (2) the amount of gain which would be recognized for tax purposes in the absence of section 511 of the Act. In determining “net proceeds”, the amount necessarily paid or incurred for brokers’ commissions is to be deducted from the gross amount of the sales price. In the event the taxpayer is an affiliate or associate of the buyer, the amount of the sales price shall not exceed the fair market value of the vessel or vessels sold as determined by the Administration. In such case the taxpayer shall furnish evidence sufficient, in the opinion of the Administration, to establish that the sales price is not in excess of the fair market value. In determining “net indemnity”, the amount necessarily paid or incurred purely for collection, or rate of exchange discounts on the payment, of the indemnity is to be deducted from the gross amount of collectible indemnity. In case of the sale or loss of several vessels or share therein, a deposit of the “net proceeds” or “net indemnity” with respect to one or more of the vessels or shares is permissible. Where several vessels or shares are sold for a lump sum, the “net proceeds” allocated to each vessel or share shall be determined in accordance with any reasonable rule satisfactory to the Commissioner of Internal Revenue. The taxpayer must deposit the full amount of each payment (including cash, notes, or other evidences of indebtedness) as a single deposit in the construction reserve fund. A payment divided between two or more depositories will be regarded as a single deposit. Amounts received by the taxpayer prior to the date of consummation of the sale of the vessel shall be considered as having been received by the taxpayer at the time the sale is consummated.

(c) *Purchase-money obligations.* Where the proceeds from the sale of a vessel include purchase-money obligations, such obligations together with the entire collateral therefor, or, in the case

of deposit of the proceeds of a share in the vessel, a proportionate part of the obligations and collateral as determined by the Administration, shall be deposited, with the remainder of the proceeds, in the construction reserve fund as a part of the “net proceeds”. The depository shall receive payment of all amounts due on such purchase-money obligations and such amounts shall be placed in the fund in substitution for the portion of the obligations paid. All installments of purchase-money obligations shall be paid directly into the fund by the obligor. In the event any such installment is not so deposited, the Administration, at any time after the due date, may require the taxpayer to deposit an amount equal to such installment. If the taxpayer so desires, he may deposit in the construction reserve fund cash or approved securities in an amount equal to the face value of any purchase-money obligations in lieu of depositing such obligations.

(d) *Vessel subject to mortgage at time of sale or loss.* Where a vessel is subject to a mortgage or other encumbrance at the time of its sale or loss and the taxpayer actually receives only an amount representing the equity therein or a share in such equity corresponding to his share in the vessel, he shall deposit in the construction reserve fund such amount and concurrently therewith other funds in an amount equal to the difference between the amount received and the “net proceeds” or “net indemnity”. Such other funds may be in the form of cash, or, subject to the approval of the Administration, (1) interest-bearing securities, or (2) an irrevocable and unconditional commitment to finance the construction or acquisition of a new vessel in whole or in part by an obligor approved by the Administration in an amount equal to the amount by which the “net proceeds” exceed the cash or securities deposited in the fund.

(e) *Unauthorized deposits.* A deposit which is not provided for by section 511 of the Act shall, without unreasonable delay, be withdrawn from the fund and tax liability will be determined as though such deposit had not been made. (See §§2.1-10 and 2.1-24.)